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Mr. James L. Connaughton, Chair
Council on Environmental Quality
Executive Office of the President
17th and G Streets, NW
Washington, DC 20503
Attention: Task Force

Dear Mr. Chairman:

Re: American Petroleum Institute's (API's) Comments on the Council on Environmental Quality's (CEQ's) Notice and Request for Comments on the Energy Task Force (66 FR 161, August 20, 2001)

The American Petroleum Institute (API) appreciates the opportunity to comment on the proposed nature and scope of the Interagency Energy Task Force ("Task Force") formed to implement those activities outlined by Executive Order 13212 ("Executive Order"), "Actions to Expedite Energy-Related Projects" (May 18, 2001). API's comments below are focused on Exploration and Production as well as the Refining sectors of the industry. In addition, we have proposed suggestions for two new project categories not included in the CEQ's *Federal Register* notice. API's pipeline operators are filing separate comments in conjunction with the Association of Oil Pipe Lines.

It is critically important to assure the American public that they will continue to receive adequate energy supplies. API is a national trade association representing over 400 companies engaged in all aspects of the oil and natural gas industry in the United States, including exploration and production, refining, transportation and marketing.

Expansion of Project Categories Needed

The notice and request for comments published in the *Federal Register* (66 FR No. 161, pages 43586 – 7) reiterated the Executive Order and requested information and comments on several categories of projects. API recommends there be a category titled,

"Exploration and Production." Exploration and production is the sector that finds and develops oil and natural gas, the first step in providing energy supplies for the American public. Since any negative impact on this sector would affect those supplies, we assume these activities fall within the scope of the Task Force's activity. Indeed, CEQ has referred to this sector already in the notice by recognizing "the importance of environmentally sound production and transmission of energy to all American people." We believe it should be made explicit as your process moves forward.

API also recommends a category titled, "Offshore Transmission /Infrastructure Projects." Examination of energy transportation infrastructure projects is important because of the recent surge of deepwater prospecting activity, coupled with simultaneous bottlenecking of coastline ports, which has led to the proposal and anticipation of major energy infrastructure developments in the Gulf of Mexico. The use of floating production, storage, and offloading systems and deepwater ports has the potential to enhance national energy and environmental security and expand industry's ability to develop oil and gas reserves in areas that otherwise would challenge or exceed the limits of current deepwater production and energy transportation infrastructure and technologies. The Task Force has the opportunity to facilitate introduction of enhanced exploration and production and energy transportation infrastructure, which is why API supports the addition of these two categories.

Exploration and Production (E&P)

The E&P industry can be divided into two separate categories, onshore and offshore, each of which has unique operating issues, federal regulatory agencies, and regulatory schemes. For onshore operators, API endorses the comments to be submitted by Public Lands Advocacy (PLA), a non-profit organization that represents the interests of the onshore exploration and production industry in the Rocky Mountain region. The domestic oil and gas industry seeks to continue its historical role of significantly contributing to the economic well being and the high standard of living enjoyed in the United States. Industry continually develops state-of-the-art technologies that allow exploration and development activities to be pursued while minimizing environmental impacts. Despite these achievements, industry's ability to operate on government lands is often stymied by unreasonable federal policies and regulatory procedures. Unabated demand for energy unquestionably requires increased access to potentially energy-rich federal lands.

The National Petroleum Council (NPC),[1] an advisory body to the Secretary of Energy, estimated that demand for clean-burning natural gas will grow by more than 30 percent by 2015. Therefore, policy-makers need to ensure that required regulatory procedures related to natural gas production permitting decisions are expedited. There are several areas where decision-making processes by government officials for onshore exploration and production projects could be improved or streamlined. API has identified impediments to onshore oil and natural gas development in three major categories:

[1] National Petroleum Council, "Natural Gas Meeting the Challenges of the Nation's Growing Natural Gas Demand", Volume I Summary Report, p. 5, December 1999.

inadequate agency resources, National Environmental Policy Act (NEPA)/planning obstacles, and onshore access impediments resulting from government regulation or policy. As the Task Force develops its agenda, we would like to discuss with you examples of problems in these areas and share our specific recommendations to solve these problems.

The largest threat for offshore operators' continued access to traditional areas is the Coastal Zone Management (CZM) system. The "consistency" provisions of the Coastal Zone Management Act (CZMA), under the guise of due process and consultation, have caused serious duplicative and incredibly costly delays to federal Outer Continental Shelf (OCS) leasing and production activities that would have no adverse environmental impacts on states' coastal zones. The CZM program is very broad and complicated, encompassing multiple agencies at different levels of government. The Administration's National Energy Plan (NEP) published in May 2001 recommends that the Secretaries of Commerce and Interior work together "to determine if changes are necessary regarding energy related activities for the siting of energy facilities in the coastal zone and on the Outer Continental Shelf (OCS)" (p. 5-8). API supports the NEP's recommendation in this regard and as a major stakeholder would welcome the opportunity to discuss many specific instances where there needs to be procedural changes to the regulations to ensure timely decision-making for energy permits.

Refinery Permits and Fuel Quality

The federal government needs to examine ways to streamline the review of permits for refinery modifications, especially those that enable the production of new cleaner fuels and those that increase fuel production to meet rising consumer demand. Over the next several years, the refining industry will begin producing new, cleaner fuels that will significantly improve our country's air quality by reducing pollution from vehicles. The NPC concluded that, "The single most critical factor in implementing any of the proposed fuel quality changes is the timely issuance of required permits."[2] Delays in obtaining the necessary permits could prevent timely production of cleaner fuels and create local supply imbalances should refineries not be able to complete construction by regulatory deadlines. Several examples are attached to illustrate the delays associated with these reviews.

For almost two years, API has been working with EPA to implement NPC recommendations for streamlining permitting of refinery modifications required to produce new fuels. However, the results of these activities to date have been disappointing. These issues must be resolved in a more timely and helpful manner than heretofore. API has very recently renewed efforts to address refinery permitting issues with EPA in response to the NEP recommendation (p.7-14) that EPA and DOE "Provide more regulatory certainty to refinery owners and streamline the permitting process where possible to ensure that regulatory overlap is limited."

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[2] National Petroleum Council, "U.S. Petroleum Refining; Assuring the Adequacy and Affordability of Cleaner Fuels", p. 117, June 2000.

The CEQ process of implementing Executive Order 13212 can support the timely production of cleaner fuels by assuring that EPA implements the NPC recommendations for refinery permit streamlining. In reviewing permit requests to facilitate governmental review and action on them, CEQ should give special attention to those necessary to allow production of cleaner fuels because of the importance of the new fuels and the regulatory deadlines companies must meet. In addition, we encourage the CEQ to work with EPA and DOE to issue their report, recommended by the NEP (p.7-14), on the impact of the New Source Review (NSR) regulations on refinery generation capacity, energy efficiency, and environmental protection. We also recommend that CEQ use this special review focus to identify sensible streamlining options for the Clean Air Act Title V operating permit program and streamline water permitting programs, such as the new Total Maximum Daily Load (TMDL) rule, which threaten to prevent refinery capacity expansions and modifications.

API would welcome the opportunity to discuss our detailed recommendations for addressing refinery permitting issues, and to provide further examples of their impact on the refining industry's ability to produce cleaner fuels in a timely manner and increase fuel production to meet rising consumer demand.

Conclusion

API compliments CEQ and the Task Force members for their leadership in addressing the critical issues surrounding permitting and other approvals of energy projects. The objectives of the underlying statutes are appropriate and not in dispute. But all stakeholders should focus on making the processes as efficient as possible so that decisions are made in a timely manner. For instance, CEQ could assign each participating agency in the Task Force with identifying its own bottlenecks to speedy permit issuance. In addition, we suggest that, with respect to agency timetables to eliminate those bottlenecks, it is important to reward accomplishments while penalizing failure to meet deadlines. The direct input of the Task Force on pending projects will certainly help and we hope the lessons learned from your reviews will lead to longer-term improvements in the system.

In the near term, government decision-makers need to address the problems we have identified to implement a fair and effective national energy policy. API looks forward to additional opportunities to share with the new CEQ Task Force issues of concern regarding energy-related projects. Finally, to ensure that adjustments are made with the least amount of disruption, it is important to start making the necessary policy decisions

now. In that effort and beyond, it is absolutely critical that those appropriate agencies which fall within the issues outlined above are fully represented at the Energy Task Force table by individuals at the appropriate decision-making levels so that energy impact decisions are fully considered and critical projects move forward without undue procedural delays.

Sincerely,

Bill Frick

G. William Frick
Vice President, General Counsel & Secretary

Attachment

Examples of Refinery Permit Issues

The following examples are included to illustrate some of the challenges that refineries have encountered in obtaining permits, given current regulations and guidance. They do not represent the entire range of refiners' concerns.

Example 1 -- Delays In Permit Review Resulted In Significantly Extend Timelines and Indefinitely Delayed Refinery Modifications to Increase Gasoline Production

Description:
In 1998, a refiner began working on the expansion of its FCCU by a nominal 200,000 gallons per day. Most of this expansion would be in increased gasoline blending components. An advanced technology-scrubbing device had been installed on this FCCU in 1994. The permit limits established in 1994 were based on vendor guarantees since the technology was not used in the United States. Subsequent testing indicated that the control device performed adequately. The unit, as of the 1994 installation was equipped with continuous emission monitors to measure NOx, SOx and CO.

A permit for the expansion indicated that the increase in emissions based on past actual to future potential would be significant even though the actual increase in emissions based on past actual to future actual were less than significant. Reductions in permitted values did not bring the PSD calculated emission increases to less than significant.

A draft PSD permit was submitted to the State in early 1999. Through discussions with the State permitting agency, the netting analysis was modified and updated. A modeling protocol was submitted and based on preliminary analysis, other changes were proposed in the refinery including reducing NOx emissions from other sources and changing stack locations and heights. As the permit review lengthened, the analysis was changed to reflect changes in the contemporaneous period. The state permitting agency has requested additional information on the BACT analysis.

Result:
In July of 2001, because of concerns about aggregation with upcoming clean fuels projects, and that even with approval, the modifications would no longer be able to be accomplished during the 2001 turnaround, the application was withdrawn. Since turnarounds on the FCCU occur only once every four years, this project is now reschedule to be coordinated with the clean fuels project down time. The PSD and non-attainment NSR analysis will reflect that it is part of the clean fuels project.

The difficulties in determining debottlenecking and aggregation issues arising out of EPA's NSR regulations, and difficulty in interpreting them, have produced a lengthy delay of a project that could have put more gasoline into the marketplace during the summers of 2001, 2002 and 2003. Since the actual emission increases would have been negligible, there was no benefit to the environment associated with delaying this project.

As a result, a possible increase in gasoline production of 200,000 gallons per day has been delayed indefinitely.

Timeline:
1998: refiner began work on the permit
1999: draft permit submitted to State
2001: permit application withdrawn prior to approval

Example 2 – Uncertainty in Calculating Air Emissions Delayed Permit Approvals That Would Increase Gasoline Production Volumes and Provide Cleaner Fuels

Description of the permitting challenge:
A refinery submitted permit applications for two unrelated projects. One project would have expanded the crude unit to increase fuel production volumes. The second would have allowed the refinery to comply with the low sulfur gasoline requirements. For both projects, neither the refinery nor the state, nor the state and EPA agreed on how to calculate the post-project emissions, which would determine whether an NSR permit was necessary. In the past, the state was comfortable completing emission calculations. Now, however, the state is not comfortable calculating emissions and requested, in two separate requests, that EPA provide input on how to calculate the post-project emissions.

These cases highlight the fact that the NSR rule is very complex and that few stakeholders (industry or permitting agencies) thoroughly understand or can agree on it. Even though States have authority or have been delegated the authority to implement the rule, states are increasingly requesting determinations from EPA. These requests prolong the permitting process and delay project approval.

Result:
The permit was approved for the crude unit expansion project; however, obtaining input from EPA added three months to the permit review process. EPA has not yet issued a determination for the low sulfur gasoline project.

Energy Impact:
Delayed increases in production capacity and production of cleaner fuels.

Timeline (Clean Fuel Project):
5-6 months to prepare application
7-8 months for review and approval of application by state (estimated)

Example 3 – Agency Delays in the Environmental Review Process Jeopardized the Refinery's Ability To Meet Regulatory Deadlines for Producing Reformulated Gasoline.

Problem Description:
A major refinery was on a tight schedule to begin modifications to enable the production of federal reformulated gasoline and California Phase 2 reformulated gasoline. The first project would reduce total air pollutant emissions from the refinery, both on an overall mass basis and on a pollutant-by-pollutant basis, by increasing the efficiency of certain operations, removing older process units from service, and installing state-of-the-art emission controls. These reductions, coupled with reduced automobile emissions from reformulated gasoline, would improve air quality in the nonattainment area substantially.

Agency delays in the environmental review process jeopardized the refinery's ability to meet regulatory deadlines for producing the reformulated gasoline. The local permitting agency reviewed and authorized site preparation and other activities the refinery undertook prior to actually receiving its NSR permit under the agency's SIP-approved permit rule and established agency guidance. EPA interpreted the local agency's rule differently than the local agency and issued a § 114 request followed by a notice of violation and a "stop work" order. The refinery obtained an extraordinary stay of EPA's administrative order from the U.S. Court of Appeals and proceeded to complete the project just in time, despite continued EPA threats to file a civil action for penalties.

Result:
The facility received and settled the NOV; a "stop work" order was issued and the facility ultimately obtained relief in the courts allowing the modifications to proceed. EPA "overfiling" and involvement in individual permit issues creates an atmosphere of uncertainty for all projects and for state/local permit agencies.

Energy Impact:
Court action enabled adequate supplies of clean gasoline to reach areas where required by federal and state regulations, despite EPA efforts to stop the facility changes.

Example 4 -- Uncertainty Associated With Delay In Issuing Water Permits

Description of the permitting challenge:
A California refinery sends all its process water to a local Publicly Owned Treatment Works (POTW) plant and discharges uncontaminated, segregated storm water into a local water body (channel). The channel is listed as impaired by California based on sediment, fish and limited water column data.

The refinery submitted an NPDES permit renewal application to a state agency in 1997. The permit expired in January 1998, and the refinery continued to operate under the old permit. The agency issued the first draft, tentative permit in September 2000 and made five revisions prior to issuing the final draft in July 2001.

The permit writer's approach was to follow the California Toxics Rule and guidance from EPA Region 9. The approach included: no mixing zone or dilution credits; no net

loading provisions; setting final water quality based effluent limits until TMDLs are completed; limited compliance schedule; and comprehensive receiving water monitoring.

Result:
Because the receiving water has background concentrations higher than the criteria in the California Toxics Rule, the refinery, when the compliance schedule goes into effect prior to the TMDL schedule, will be required to treat the storm water to the water quality criteria. These limits may approach zero-discharge if no mixing zone or dilution credits are allowed.

API believes that it is premature to set final limits prior to the completion of the TMDLs. Additionally, in the event that the TMDL process proves that the refinery is not a contributor of a specific constituent, this action may jeopardize the refinery because it will by that time already have been forced to misdirect resources for expensive advanced treatment and other facility modifications. Furthermore, the process of subsequently raising the limit in the permit will be subject to many permitting variables. On the other hand, if the TMDL process results in waste load allocations that specify lower limits than the current final limits, then the existing treatment facilities may become obsolete, thereby forcing the refinery to design and install new treatment facilities to comply with the more stringent limits. Either way, it clearly does not make sense to implement limits, which will likely be confirmed to be inappropriate, before full information is obtained to establish the right limits to put in the permit.

Energy Impact:
Discourages process and equipment modifications that would increase capacity and allow for the production of cleaner-burning fuels.

Recommended solution:
API recommends TMDL based compliance schedules for all 303(d) listed constituents in permit renewals and modifications. Furthermore, API recommends that no final limits be placed in permits, until such time as the TMDLs have been completed and limits are determined based on waste load allocations attributable to their respective sources. The compliance schedule should extend to completion of the TMDLs plus a necessary period for implementation of the final limits derived from the waste load allocations.

The permit must allow the refinery to perform a mixing zone study prior to establishing water quality-based effluent limits. By simply stating that a mixing zone and dilution credits are not allowed to "prevent further degradation" of water quality, the permit writer has denied the option to evaluate the availability of a site-specific mixing zone and dilution credits.

Timeline:
1997: Refiner filed permit renewal application with state agency
1998: Previous permit expired
2000: Tentative permit approval
2001: Final state permit approval